Feb 6 1871
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~276.~~ 85 with 86

JUSTO GARCIA Y LEON, PLAINTIFF IN ERROR,

vs.

MARIANO GALCERAN.

IN ERROR TO THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF LOUISIANA.

FILED NOVEMBER 3, 1869.

Feb 11 1874
Affirmed

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1 State of Louisiana, seventh district court for Orleans.

MARIANO GALCERAN
vs.
JUSTO GARCIA Y LEON. } No. 812.

Petition.—Filed January 15th, 1869.

To the honorable the judge of the seventh district court in and for the parish of Orleans:

The petition of Mariano Galceran, who resides in the city of New Orleans, respectfully represents—

That Justo Garcia y Leon, who also resides in this city, is justly and truly indebted to your petitioner in the full sum of two hundred
2 and nine dollars and fifty-five cents, exclusive of interest and costs, for this, to wit: That your petitioner, on or about the 8th day of August, 1868, brought a suit against one Joseph Maristany, sr., in this honorable court for the sum of one hundred and seventy-three dollars, with five per cent. interest thereon from the 10th day of August, 1868, until paid, and costs of suit, and caused to be sequestered in said suit, by the civil sheriff of the parish of Orleans, the Spanish schooner "Gallego," her tackle, apparel, and furniture, which then belonged to the said Joseph Maristany, senior; and upon which your petitioner had then the mariner's lien and privilege, according to the laws of Louisiana; that said schooner was bonded by the said Maristany and released by the said sheriff on the 11th of August, 1868, upon the said Maristany's giving bond and security in favor of said sheriff for the sum of two hundred and fifty dollars, with said Justo Garcia y Leon as surety, and conditioned as follows, to wit: "That if the defendant, Joseph Maristany, senior, should not send the above-described property
3 (that is, said schooner, her tackle, apparel, & furniture) out of the jurisdiction of this court, that he would not make an improper use of it, and that he would faithfully present the same in case he should be decreed to restore the same to the plaintiff, or should satisfy such judgment as may be rendered in the suit then pending as above-mentioned, then said obligation to be void, or else to remain in full force;" that said forthcoming bond was the same day transferred, assigned, and set over by said sheriff to your petitioner; that in due course of law, to wit, on or about 7th of November following, your petitioner obtained a final judgment against the said Joseph Maristany, senior, for the amount claimed in said suit by your petitioner, with lien and privilege upon the property sequestered; that execution issued thereon soon thereafter; that demand was made of the said Joseph Maristany, senior, by the said sheriff for the delivery of the said schooner without any effect, and that said vessel, which was fully worth ten thousand dollars when she was sequestered, soon thereafter sailed
4 for a foreign port, and is now beyond the process of this honorable court; that your petitioner has now his recourse against the said forthcoming bond, which is forfeited, to be paid the amount of his judgment aforesaid, which, together with clerk's and sheriff's costs, amounts to the aforesaid sum of two hundred and nine dollars and fifty-five cents, exclusive of interest and costs, as the whole will more fully appear, together with all other necessary particulars, from the case of Mariano Galceran vs. Joseph Maristany, senior, known on the docket of this honorable court as suit No. 80, and the two certificates of costs

hereto annexed and made part of this petition; and that, although often amicably demanded, the defendant, Justo Garcia y Leon, has heretofore failed and neglected to pay said judgment, interest, and costs.

Wherefore your petitioner respectfully prays that the said Justo Garcia y Leon be cited to appear and answer this petition; and that after due proceedings had, there be judgment in favor of your petitioner against said Justo Garcia y Leon, defendant herein, for the aforesaid sum
5 of two hundred and nine dollars and fifty-five cents, ($209 55,) with five per cent. interest thereon from the 10th of August, 1868, until paid, and costs of suit; and your petitioner prays for general relief, and as in duty bound, &c.

(Signed) SAMBOLA & DUCROS, *Att'ys.*

Document annexed to and filed with the petition.—Clerk's bill.

No. 80.—State of Louisiana, seventh district court for the parish of Orleans.

MARIANO GALCERAN
vs.
JOSEPH MARISTANY, SR.

I hereby certify that the taxed costs in this case amount to twenty-six $\frac{30}{100}$ dollars.

Clerk's office, this 13th January, 1869.

(Signed) H. J. DUSSOR, *D'y Clk.*

$26\frac{30}{100}$.—Sambola & Ducros, attorneys.

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Received payment.

—— ——.

6 *Sheriff's bill of costs annexed to and filed with the petition.*

—— ——, attorney.

SHERIFF'S OFFICE, *Parish of Orleans:*

No. 80.—Seventh district court for the parish of Orleans.

MARIANO GALCERAN
vs.
JOS. MARISTANY, SR.

I do hereby certify that the sheriff's fees in this case amount to ten dollars and 25 cents.

Sheriff's office, this 13th day of January, 1869.

(Signed) PAUL T. ABADIE, *Deputy Sheriff.*

Received payment.

——— ———,
Deputy Sheriff.

Citation to Justo Garcia y Leon.

7 State of Louisiana, seventh district court for the parish of Orleans. in the city of New Orleans.

MARIANO GALCERAN
vs.
JUSTO GARCIA Y LEON } No. 812.

Mr. JUSTO GARCIA Y LEON, *N. O., La.:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the seventh district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Thomas Wharton Collens, judge of the said court, the 15th day of January, in the year of our Lord 1868.

(Signed) A. D. BERNOUDY, *Clerk.*

Sheriff's return.

Received January 15th, 1869, and on the 16th day of the same
8 month and year served copy of the within citation and accompanying petition on Justo Garcia y Leon, defendant herein, in parson.

Ret. same day.

(Signed) PHIL. LACOSTE, *D'y Sh'ff.*

Default.—Extract from the minutes of Thursday, 28th January, 1869.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

MARIANO GALCERAN
vs.
JUSTO GARCIA Y LEON } No. 812.

On motion of Sambola and Ducros, attorneys for the plaintiff in this case, upon showing to the court that the defendant therein has failed to answer, though duly cited, it is ordered that judgment by default be entered against him in said case.

9 *Default set aside.—Extract from the minutes of Saturday, January 30th, 1869.*

Seventh district court for the parish of Orleans.

Present: Hon. Thos. Wharton Collens, judge.

MARIANO GALCERAN
vs.
JUSTO GARCIA Y LEON. } No. 812.

On motion of Hyman, Wallace & Handlin, attorneys for the defend-

ant in this case, and upon filing pleas to the jurisdiction of this court, ratione materiæ, it is ordered that the judgment by default, entered in this case, be set aside.

Exceptions.—Filed January 30th, 1869.

Seventh district court of the parish of Orleans.

10 M. GALCERAN
vs.
J. GARCIA Y LEON. } No. 812.

And now comes the defendant and excepts to the plaintiff's action, and says that the same is based on an admiralty bond in a proceeding in rem, over which this court has no jurisdiction ratione materiæ, and that said bond was taken coram non judice, and is void.

Wherefore he prays to be hence dismissed, with costs, and for general relief.

(Signed) HYMAN, WALLACE & HANDLIN,
Attorneys for Defendant.

Exceptions overruled.—Extract from the minutes of Saturday, February 20th, 1869.

Seventh district court of the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

11 MARIANO GALCERAN
vs.
JUSTO GARCIA Y LEON. } No. 812.

The exception in this case came on to-day for trial.

Present: P. A. Ducross, jr., for plaintiff.
" ——— Hyman, for defendant.

When, after hearing pleadings, evidence, and counsel, the court considering the law and evidence to be with plaintiff, it is adjudged and decreed that said exception be overruled with costs.

Default.—Extract from the minutes of Wednesday, February 24th, 1869.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

MARIANO GALCERAN
vs.
JUSTO GARCIA Y LEON. } No. 812.

12 In this case, on motion of counsel for plaintiff, upon showing to the court that the exception therein filed by defendant in said case was overruled; that the legal delays have elapsed; and that he has failed to file answer, it is ordered that judgment by default be entered against said defendant in said case.

Order default aside.—Extract from the minutes of Friday, February 26th, 1869.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

MARIANO GALCERAN
vs.
JUSTO GARCIA Y LEON. } No. 812.

On motion of Hyman, Wallace & Handlin, attorneys for the defendant in this case, it is ordered that the judgment by default herein be set aside, and the defendant's answer in said case now filed.

13 *Answer.—Filed February 26th*, 1869.

Seventh district court for the parish of Orleans.

GALCERAN
vs.
GARCIA Y LEON. } No. 812.

And now comes the defendant, and for answer says that he pleads the general denial; that the bond sued on is null; and that this court has no jurisdiction ratione materiæ, and has been injoined from proceeding further in this suit by the U. S. circuit court.

Wherefore defendant refuses to defend himself further before this court, and files this as an answer.

(Signed) HYMAN, WALLACE & HANDLIN,
Att'ys for Defendant.

Note of evidence.—Filed March 8th, 1869.

14 In 7th district court, &c., March 8th, 1769.—On trial this day.

MARIANO GALCERAN
vs.
JUSTO GARCIA Y LEON. } No. 812.

Counsel for plaintiff offers in evidence the record of suit No. 80 of the docket of this court; also the bond taken, and the sheriff's return.

Mr. , witness for plaintiff, sworn and examined as to the value of the schooner "Gallego," sequestered.

Record of suit No. 80, offered in evidence by plaintiff in the note of evidence.

Seventh district court for the parish of Orleans.

MARIANO GALCERAN
vs.
JOSEPH MARISTANY, SENIOR. } No. 80.

15 To the honorable the seventh district court of the parish of Orleans:

The petition of Mariano Galceran, temporarily residing in the city of

New Orleans, respectfully represents that Joseph Maristany, senior, who resides in this city, is justly and truly indebted to your petitioner in the full sum of one hundred and fifteen dollars in gold or one hundred and seventy-three dollars in United States treasury notes, exclusive of interest and costs, for this, to wit: That your petitioner was engaged as cook on board the Spanish schooner "Gallego," on or about the 10th June, 1868, in the port of Havana, by the said Maristany, who was then, and still is, the owner of said vessel, which was bound for this port and back again, for and in consideration of the monthly wages of thirty days, which were a reasonable compensation for the services to be performed by your petitioner; that said schooner started with your petitioner on board from the port of Havana on the 7th of July fol-
16 lowing, and arrived at this port on or about the 24th of the same month and year; that your petitioner has faithfully performed his duty as cook on board, and was ready and willing to comply with his contract, and fulfill the same duties on board on her way back to the port of Havana, as he had agreed and bound himself to do; but that the defendant, far from performing his part of the contract, violated the same, and without your petitioner's consent, and without any reason whatever, discharged your petitioner a few days ago, and forbade him to remain on board, and continue his functions of cook, and that the defendant, by this open and active violation of his contract, is liable to your petitioner in damages; that your petitioner has already incurred, in consequence of this breach of contract, an expense of twenty-five dollars, at least, for board and lodging here in this city, and will have to pay the sum of thirty dollars in gold, at least, for his passage back to Havana; that the amount actually due your petitioner by the
17 defendant, and for the payment of which your petitioner has a lien and privilege upon said schooner, her tackle, apparel, & furniture, and the proceeds of the sale thereof, is, therefore, the aforesaid sum of one hundred and fifteen dollars in gold or one hundred and seventy-three dollars in United States currency; and that although often amicably demanded, the defendant has failed and neglected to pay said debt.

Wherefore your petitioner respectfully prays that the defendant be cited to appear and answer this petition, and that after due proceedings had there be judgment in favor of your petitioner against said defendant for the aforesaid sum of one hundred and fifteen dollars in gold or one hundred and seventy-three dollars in United States currency, with five per cent. interest thereon from the 10th of August, 1868, until paid, and costs of suit, together with the sailor's lien and privilege on the property sequestered, and the proceeds of the sale thereof, and your petitioner prays for general relief and as in duty bound.

(Signed) SAMBOLA & DUCROS, *Att'ys.*

18 *Affidavit.—Filed August 8th*, 1868.

Mariano Galceran, being duly sworn, deposes and says, that Joseph Maristany, sr., is justly and truly indebted unto affiant in the sum of one hundred and four dollars in gold, exclusive of interest and costs, for one month and twenty-six days' wages, due affiant as cook, for services rendered within the last two months in said capacity on board the Spanish schooner Gallego, from the port of Havana to this port, at the rate of thirty dollars per month, and for damages; that the said Joseph Maristany, sr., is the owner and proprietor of said vessel; that for the payment of said wages and damages now due and owing, affiant has a

lien and privilege on said vessel, and affiant apprehends that said vessel will be removed out of the State of Louisiana, before he can have the benefit of his said lien and privileges, and that in fact affiant knows that said schooner will start this evening for the port of Havana, unless prevented by an order of court.

19 Wherefore affiant prays for a sequestration upon giving bond, as required by law.

(Signed) MARIANO GALCERAN.

Sworn to & subscribed before me this the 8th day of August, 1868.

(Signed) GASP. JAMES, *D'y Clk.*

Order.

Let a writ of sequestration issue in this case as prayed for, and according to law, upon the plaintiff, giving bond with good and solvent security, conditioned as the law directs, in the sum of two hundred and fifty dollars.

New Orleans, 8th August, 1868.

(Signed) T. WHARTON COLLENS, *Judge.*

Bond.—Filed August 8th, 1868.

Know all men by these presents, that we, Mariano Galceran, as principal, and Thomas Jorda, as security, of the city of New Orleans-

20 and State of Louisiana, are held and firmly bound unto Joseph Maristany, senior, & als., in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Joseph Maristany, senior, & als., their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents. Sealed with our seals, and dated the eighth of August, in the year of our Lord, 1868.

Whereas the said Mariano Galceran has this day presented a petition to the honorable the seventh district court for the parish of Orleans, praying a writ of sequestration:

Now the condition of the above obligation is that we, the above bound Mariano Galceran and Thomas Jorda, will well and truly pay to the said Joseph Maristany, senior, & als., the defendant in said sequestration, all such damages as they may recover against us, in case it

21 should be decided that the sequestration was wrongfully obtained.

(Signed) MARIANO GALCERAN. [L.S.]

" THOS. JORDA. [L.S.]

Signed, sealed, and delivered in the presence of—

GASP. JAMES.

Citation to Joseph Maristany, senior.

State of Louisiana, seventh district court for the parish of Orleans, in the city of New Orleans.

MARIANO GALCERAN
vs.
JOSEPH MARISTANY, SENIOR. } No. 80.

Mr. JOSEPH MARISTANY, Senior:

You are hereby summoned to comply with the demand contained in

the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the seventh district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Thomas Wharton Collens, judge of
22 the said court, the 10th day of August, in the year of our Lord 1868.

(Signed) G. L. BERNOUDY, *D'y Clerk.*

Sheriff's return.

Received August 11th, 1868, and on the same day, month, and year served copy of this citation and accompanying petition on Joseph Maristany, senior, defendant herein, by leaving the same on board the schooner Allego, in the hands of Pablo Pons, mate of said schooner, whose name and capacity I learned by interrogating him.

The service was made in the manner above stated, the defendant herein being captain of said schooner, and having his domicil thereon, but being absent therefrom at the time of service.

Ret'd same day.

(Signed) GEO. B. MAHAN, *D'y Sh'ff.*

Writ of sequestration.

23 State of Louisiana, seventh district court for the parish of Orleans.

MARIANO GALCERAN
vs.
JOS. MARISTANY, SENIOR. } No. 80.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana, and of the seventh district court for the parish of Orleans, to sequester and take into your possession and safe-keeping, until the further order of this court, the Spanish schooner "Gallego," her tackle, apparel, &c.

And what you do in the premises, you make return thereof, together with this writ, to our said court, as the law directs.

Witness the Honorable Thomas Wharton Collens, judge of our said court, this 8th day of August, in the year of our Lord, one thousand eight hundred and sixty-eight, and in the ninety-third year of the independence of the United States.

(Signed) GASP. JAMES, *D'y Clerk.*

24 *Sheriff's return to writ.*

Received August 8th, 1868, and on the same day seized and took into my possession the schooner Gallego, her tackle, apparel, furniture, &c., as will more fully appear by reference to the within notice of seizure hereto attached and made part hereof; and subsequently, on the 11th of same month and year, said seizure was released, defendant furnishing bond, as per within annexed order of court, in the sum of two hundred and fifty dollars, with Justo Garcia y Leon as security.

Order, bond, and writ returned same day.

Sheriff's fees for this writ, $2 00.

(Signed) W. J. GRADY, *D'y Sheriff.*

Motion and order to bond.

Seventh district court for the parish of Orleans.

25 MARIANO GALCERAN
vs.
JOSEPH MARISTANY, SENIOR. } No. 80.

On motion of L. Lombard, of counsel for defendant, and on giving the court to understand and be informed that by virtue of a writ of sequestration, issued in the above-entitled case, directed to the sheriff of the parish of Orleans, for a sum of one hundred and four dollars, his schooner "Gallego" has been seized and taken possesion of by the sheriff of the said parish of Orleans, which he desires to bond, it is ordered by the court that said schooner "Gallego" be released on appearer furnishing bond, with good and solvent security, in the sum of two hundred and fifty dollars, conditioned as the law requires.

Bond.—Filed August 12th, 1868.

Know all men, that we, Joseph Maristany, as principal, and
26 Justo Garcia y Leon, as security, are held unto Thomas L. Maxwell, sheriff of the parish of Orleans, in the State of Louisiana, in the penal sum of two hundred and fifty dollars, ($250 00,) for the payment whereof to the said Thos. L. Maxwell, sheriff, his executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, respectively by these presents, as witness our respective names hereunto affixed at New Orleans this 11th day of August, in the year eighteen hundred and sixty-eight.

Whereas, in and by virtue of a writ of sequestration, issued out of the honorable the 7th district court for parish of Orleans, at the suit of Manuel Pijuan vs. Joseph Maristany, senior, and numbered 80 on the docket of the said court, and which suit is now pending therein, the following described property, to wit, the schooner Gallego, her tackle, apparel, furniture, &c., has been seized, taken into custody of the said sheriff, and detained according to law; but the same has been
27 released and delivered to the defendant, upon the appearance of the defendant in the said suit, and delivering to the said Thos. L. Maxwell the present obligation.

The condition of which is such, that if the said defendant shall not send the above-described property out of the jurisdiction of the court, that he will not make an improper use of it, and that he will faithfully present the same in case he should be decreed to restore the same to the plaintiff, or shall satisfy such judgment as may be rendered in the said suit pending as above mentioned, then this obligation to be void, or else to remain in full force.

(Signed) JOSÉ MARISTANY.
JUSTO GARCIA Y LEON.

Signed and delivered in presence of—
(Signed) PAUL T. ABADIE.

[25c. revenue stamp.]

28 *Oath of security, (on the back of the bond.)*

I, Justo Garcia y Leon, do solemnly swear that I reside in the parish of Orleans, and that after payment of all my debts and liabilities I am

worth over and above the sum of eleven hundred and fifty dollars; that I am not tutor of minor children; and that I have not signed any obligation which may vitiate the validity of these present bonds.

(Signed) JUSTO GARCIA Y LEON.

Sworn to and subscribed before me this 11th of August, 1868.

(Signed) GASP. JAMES, *D'y Clk.*

Transfer, (on back of bond.)

NEW ORLEANS, *August 11th*, 1868.

STATE OF LOUISIANA, *Parish of Orleans:*

I do hereby transfer, assign, and set over to plaintiff herein all my right, title, and interest in and to the within bond.

29 (Signed) For THOMAS L. MAXWELL,
Sheriff Parish of Orleans.
Per PAUL T. ABADIE, *D'y Sh'ff.*

Default.—Extract from the minutes of Wednesday, November 4th, 1868.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

MARIANO GALCERAN
vs.
JOS. MARISTANY, SR. } No. 80.

On motion of Sambola and Ducros, attorneys for the plaintiff in this case, upon showing to the court that the defendant therein, though duly cited, has failed to answer, it is now ordered that judgment by default be entered against him.

30 *Judgment.*

Seventh district court for the parish of Orleans.

MARIANO GALCERAN
vs.
JOSEPH MARISTANY, SR. } No. 80.

Judgment entered November 7th, 1868.

On motion of Sambola and Ducros, attorneys for the plaintiff in this cause, upon producing to the court due proof of his demand, and by reason of the law and evidence being in favor of plaintiff, it is adjudged and decreed that the judgment by default herein entered on the 11th instant be now confirmed; that the plaintiff, Mariano Galceran, do have and recover of the defendant, Joseph Maristany, senior, the sum of one hundred and seventy-three dollars, with five per cent. interest thereon from the 10th of August, 1868, until paid, and costs of suit, with sailor's lien and privilege on the property sequestered herein, or its proceeds.

Judgment signed November 12th, 1868.

(Signed) T. WHARTON COLLENS, *Judge.*

31 *Fi. fa.*

State of Louisiana, seventh district court for the parish of Orleans, in the city of New Orleans.

MARIANO GALCERAN *vs.* JOSEPH MARISTANY, SR. } No. 80.

The State of Louisiana, to the sheriff of the parish of Orleans, greeting:

We command you that by seizure and sale of the property, real and personal, rights and credits of defendant, in the manner prescribed by law, you cause to be made the sum of one hundred and seventy-three dollars, with five per cent. interest thereon from 10th of August, 1868, until paid, and also the sum of eighteen dollars and ten cents costs, as well as your own costs and charges, to satisfy a judgment against
32 the said defendant in our seventh district court for the parish of Orleans, on the seventh day of November, 1868, in favor of Mariano Galceran, with sailor's lien and privilege on the property sequestered herein or its proceeds; and how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

Witness the Honorable Thomas Wharton Collens, judge of the said court, this twelvth day of November, in the year of our Lord 1868.

[SEAL.] (Signed) G. L. BERNOUDY, *D'y Clerk.*

Sheriff's return to fi. fa.

Received November 13th, 1868. No property found, after due demand made of defendant. Plaintiff's attorneys failed to point out property, though duly called upon so to do. At the request of plaintiff's
33 attorneys, called upon Justo Garcia y Leon, surety, to point out property of defendants, which he declared himself unable to do.

Ret'd Jan'y 22nd, 1869.

(Signed) S. M. BURNETT, *D'y Sh'ff.*

Rule.—Filed November 18th, 1868.

Seventh district court for the parish of Orleans.

MANUEL PIJUAN *vs.* JOSEPH MARISTANY. } Nos. 78.

JUAN OLIVER *vs.* SAME. } 79.

MARIANO GALCERAN *vs.* SAME. } & 80.

On motion of Hyman, Wallace and Handlin, attorneys for Joseph Maristany, and on suggesting to the court that the sheriff of the parish of Orleans has notified defendant that he holds fi. fa. No. 78, for $383 00; fi. fa. No. 79, for $233 00; and fi. fa. No. 80 for $173 00, amounting in the

aggregate to $789 00, against defendant, and is about to seize his
34 property, it is ordered by the court that said sheriff show cause on the 25th November, 1868, at 10 o'clock a. m., why said fi. fa.'s should not be quashed and why he should not suspend all proceedings under the same on the following grounds, to wit:

1st. Because said writs are void on the face of the papers in the record, which show that it is a matter of maritime jurisdiction, over which this court has no jurisdiction ratione materiæ.

2nd. There is no judgment or judgments against defendant, and said sheriff is a tresspasser.

Sheriff's return to rule.

Received November 19th, 1868, and on the same day the sheriff accepted service of copy of the within rule.

Ret'd same day.

(Signed) PAUL T. ABADIE, *D'y Sheriff.*

35 *Order continuing rule.—Extract from the minutes of Wednesday, November 25th*, 1868.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

MARIANO GALCERAN *vs.* JOSEPH MARISTANY, SR. } No. 80.

The rule herein taken on the 18th instant, in behalf of Joseph Maristany, on the sheriff, was called up to-day.—W. W. Handlin for plaintiff in rule; J. K. Dick, representing the sheriff—when after hearing pleadings and parties, it is ordered that the same be continued to the 3d of December next, at 10 a. m.

Answer of sheriff to rule.—Filed November 30th, 1868.

36 MANUEL PIJUAN, 78,
JUAN OLIVER, 79,
MARIANO GALCERANO, 80, } 7th district court.
vs.
JOSEPH MARISTANY.

Thos. L. Maxwell, sheriff, made defendant herein, excepts to any proceedings against him, by rule or otherwise, on the grounds that he is no party in interest in said suits, or the writs therein issued; that the plaintiffs above named caused the said writs to issue, and should have been made parties to this rule.

He denies having committed any act of trespass, and if he has done any act in the premises, it was done in obedience to orders from this court and pursuant to law regulating sheriff's duties relative to writs of fi. fa.

Wherefore he prays that said rule, as far as it tends to make him a party to any litigation whatever, be dismissed, and that plaintiffs above named be notified of these proceedings, and made parties
37 thereto, and that they have notice of trial of rule, viz, for December 3d, 1868, at 10 o'clock a. m.

(Signed) THOS. L. MAXWELL, *Sheriff*,
Pr. J. H. DICK, *Deputy.*

Endorsement.

Service accepted. N. O., December 3d, 1868.
(Signed) SAMBOLA & DUCROS,
Of Counsel for Pl'ff.

Order continuing rule.—Extract from the minutes of Thursday, December 3d, 1868.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

MARIANO GALCERAN
vs.
JOS. MARISTANY, SR. } No. 80.

38 The rule herein by Joseph Maristany on the sheriff was called up this day—W. W. Handlin, for plaintiff in rule; J. K. Dick, for the sheriff; P. A. Ducros, jr., representing plaintiff in suit—and it appearing that the plaintiff in this case, who is made party to said rule, has not been notified thereof, it is ordered that said rule be continued to Thursday, 10th instant, at 10 a. m., and that the plaintiff in this case be served with a copy of the rule, the answer thereto, and of this order.

Document.—(Notice of seizure.)

STATE OF LOUISIANA, *New Orleans, Aug. 8th*, 1868:

Nos. 78, 79, 80.

Sheriff's office.—Parish of Orleans, in the 7th district court for the parish of Orleans.

MANUEL PIJUAN
vs.
JOS. MARISTANY, SR.

39 JUAN OLIVER
vs.
SAME.

MARIANO GALCERAN
vs.
SAME.

To JOSEPH MARISTANY, Senior:

Please to take notice that by virtue of three (3) writs of sequestration, issued in the above-mentioned suits, I have seized and taken into my possession the Spanish schooner "Gallego," her tackle, apparel, &c., &c.
(Signed) S. M. BURNETT,
D'y Sheriff.

Rule for a new trial.—Filed December 11th, 1868.

Seventh district court for the parish of Orleans.

MANUEL PIJUAN & AL.
vs.
JOSEPH MARISTANY.

On motion of Hyman, Wallace and Handlin, attorneys for Joseph

Maristany, plaintiff, in rule against the sheriff to quash the fi. fa.'s
40 herein as nullities, it is ordered by the court that said sheriff, and others made parties to said rule by him, show cause on Saturday, 19th December, 1868, at 10 o'clock a. m., why a new trial should not be granted on the following grounds:

1st. Because the judgment dismissing said rule is contrary to law and evidence, since the record shows that this is a matter of admiralty jurisdiction, which belongs exclusively to the federal courts, it being for seamen's wages.

2nd. Because said judgment overrules and totally ignores the decision of the supreme court of Louisiana, and that also of the Supreme Court of the United States.

Sheriff's return to rule for new trial.

Received December 12th, 1868, and on the same day the sheriff of the parish of Orleans accepted service of copy of the within rule, and on the same day served similar copies on J. Olivier, Manuel Pijuan, and M. Galceran, through A. Sambola, their attorney, who accepted service thereof.

41 Ret'd same day.

(Signed) PAUL T. ABADIE, *D'y Sh'ff.*

Order dismissing rule.—Extract from the minutes of Saturday, December 19th, 1868.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

MARIANO GALCERAN *vs.* JOSEPH MARISTANY, SR. } No. 80.

The rule taken in this case for a new trial came on this day—W. W. Handlin, for plaintiff in rule; Sambola & Ducros, for defendants therein—when, after hearing pleadings and argument, for the reasons assigned in open court, and the court seeing no error in the judgment ren-
42 dered, ordered that said rules be dismissed, with costs.

End of record No. 80 offered in evidence by plaintiff in the note of evidence.

Bond and sheriff's return.

Also offered in evidence by plaintiff in the note of evidence. (Already copied.)

Record No. 812, *(continued.)—Judgment.*

Seventh district court for the parish of Orleans.

MARIANO GALCERAN *vs.* JUSTO GARCIA Y LEON. } No. 812.

Judgment entered 8th March, 1869, when, after hearing pleadings

43 and evidence, and by reason of the law and evidence being in favor of plaintiff, it is adjudged and decreed that there be judgment herein in favor of plaintiff, Mariano Galceran, and against the defendant, Justo Garcia y Leon, for the sum of two hundred and nine and $\frac{55}{100}$ dollars, with five per cent. interest, from the 10th of August, 1868, until paid, and costs of suit.

Judgment signed 19th March, 1869.

(Signed) T. WHARTON COLLENS, *Judge.*

Motion for a new trial.—Filed March 11th, 1869.

Seventh district court for the parish of Orleans.—March 11th, 1869.

GALCERAN *vs.* GARCIA Y LEON. } No. 812.

44 On motion of Hyman, Wallace & Handlin, attorneys for defendant, and on suggesting to the court the judgment herein is contrary to law and evidence, it is ordered by the court that plaintiff show cause on the 18 March, 1869, at 10 o'clock a. m., why a new trial should not be granted.

Sheriff's return to rule.

Received March 12th, 1869, and on the 13th day of same month and year served copy of the within rule on Galceran, plaintiff herein, through Sambola and Ducros, attorneys, by personal service on Ducros, esq.

Re't same day.

(Signed) A. F. LYND, *D'y Sh'ff.*

Order dismissing rule.—Extract from the minutes of Thursday, March 18th, 1869.

Seventh district court for the parish of Orleans.

Present: Hon. T. Wharton Collens, judge.

45 MARIANO GALCERAN *vs.* JUSTO GARCIA Y LEON. } No. 812.

The rule taken in this case for a new trial came on this day—present, Sambola & Ducros, for plaintiff; defendant and plaintiff in rule absent, not represented—when, after hearing pleadings, and no cause being shown why a new trial should be granted, it is ordered that said rule be dismissed with costs.

Petition for a writ of error.—Filed 20th March, 1869.

To the Honorable T. Wharton Collens, judge of the seventh district court for the parish of Orleans, State of Louisiana.

Seventh district court for the parish of Orleans.

MARIANO GALCERAN *vs.* JUSTO GARCIA Y LEON. }

46 The petition of Justo Garcia y Leon respectfully shows and states—

That he was made party to the above-entitled suit as security for the

forthcoming of the Spanish Gallego, which suit was pending in this court, and that said court is the highest court of said State in which a decision in the said suit could be had.

That on the 19th day of March, A. D. 1869, a final judgment was rendered in said suit by the said court, whereby your petitioner, as said party defendant, is aggrieved, and which your petitioner believes to be erroneous.

That in said suit was drawn in question the validity of a statute of the United States, and the decision was against its validity.

That in said suit was drawn in question a title, right, privilege, and immunity, claimed under the Constitution and a statute of the United States, and the decision was against such title, right, privilege, and immunity.

That your petitioner is desirous of having said judgment
47 revised by the Supreme Court of the United States.

Wherefore your petitioner prays that you will allow a writ of error in said suit, returnable before the Supreme Court of the United States on the first day of its next term.

(Signed) HYMAN, WALLACE & HANDLIN,
Attorneys for Justo Garcia y Leon.

I allow the writ of error as prayed for.
March 20th, 1869.
(Signed) T. WHARTON COLLENS, *Judge.*

Endorsement on copy of writ of error.

Filed March 20th, 1869. Seventh district court. No. 812. Mariano Galceran vs. Justo Garcia y Leon. Writ of error.

48 Copy of writ of error lodged in the clerk's office of the seventh district court for the parish of Orleans, State of Louisiana, in pursuance t' the statute in such cases made and provided, this 20th day of March, 1869.

(Signed) HYMAN, WALLACE & HANDLIN,
Attorneys of Plaintiff in Error.

THE UNITED STATES OF AMERICA, *Louisiana:*

The President of the United States to Mariano Galceran, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the seventh district court for the parish of Orleans, Louisiana, wherein Justo Garcia y Leon is plaintiff in error, [plaintiff in error,] and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Justo Garcia y Leon, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable ——— ———, Chief Justice of the Supreme Court of the United States, this twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] T. WHARTON COLLENS,
Judge of the Seventh District Court for the parish of Orleans.

(Indorsed:) Seventh district court for the parish of Orleans, Louisiana. No. 812. Mariano Galceran vs. Justo Garcia y Leon. Citation,

to be served on def't in error, Mariano Galceran, an absentee, through P. A. Ducros, att'y.

Sheriff's return.

Received July 16, 1869, and on the same day, month, & year served a copy of the within citation on Mariano Galceran, defendant in error, through P. A. Ducros, attorney for defendant in error, personally, said defendant in error being an absentee.

Ret'd same day.

GEO. H. TARDY,
D'y Sh'ff P. O.

Sworn to & subscribed before me this 16th day of July, A. D. 1869.

A. D. BERNOUDY,
Clerk 7th Dist. Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the seventh district court for the parish of Orleans, State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before, the same being the highest court of law in the State of Louisiana in which a decision could be had in the said suit, between Mariano Galceran and Justo Garcia y Leon, No. 812 of the docket of said court, a manifest error hath happened, to the great damage of the said Justo Garcia y Leon, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 20th of March, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

(Indorsed:) Seventh dist. court. No. 812. Mariano Galceran vs. Justo Garcia y Leon. Writ of error.

Filed March 20th, 1869.

H. J. DUSSOR, *D'y Clk.*

Bond for writ of error.—Filed 20th March, 1869.

Know all men by these presents that we, Justo Garcia y Leon as principal, and T. Avendano and José Martinez del Campo as sureties, are held and firmly bound unto Mariano Galceran in the full and just sum of ($260 00) two hundred and sixty dollars, to be paid to the said

Mariano Galceran, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind
49 ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 20th day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a seventh district court for the parish of Orleans, holding sessions in and for said parish and State, in a suit depending in said court, wherein Mariano Galceran was plaintiff, and Justo Garcia y Leon was defendant, and judgment was rendered against the said Justo Garcia y Leon, defendant, and the said Justo Garcia y Leon having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Mariano Galceran, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said Justo Garcia y Leon shall prosecute his writ to effect, and an-
50 swer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JUSTO GARCIA Y LEON. [L. S.]
T. AVENDANO. [L. S.]
JOSÉ MARTINEZ DEL CAMPO. [L. S.]

Sealed and delivered in presence of—

Bond taken and approved March 20th, 1869.

(Signed) T. WHARTON COLLENS, *Judge.*

Certificate of clerk.

State of Louisiana, seventh district court for the parish of Orleans.

I, A. D. Bernoudy, clerk of the seventh district court for the parish of Orleans, duly commissioned and sworn as such, do hereby certify that the above and foregoing fifty (50) pages do contain a full and cor-
51 rect transcript of the record of the case wherein Mariano Galcerans is plaintiff, and Justo Garcia y Leon is defendant, instituted in this court, and now on the records thereof under the No. 812.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this sixth day of August, 1869, in the year of our Lord eighteen hundred and sixty-nine, and in the ninety-fourth year of the independence of the United States of America.

[SEAL.] A. D. BERNOUDY, *Clerk.*

Certificate of judge to the foregoing clerk's certificate.

I, Thomas Wharton Collens, sole judge of the seventh district court for the parish of Orleans, do hereby certify that A. D. Bernoudy is clerk of the said court, and that the signature, A. D. Bernoudy, to the
52 foregoing certificate, is in the proper handwriting of him the said clerk; to his official acts as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand at the city of New Orleans, on this sixth day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

T. WHARTON COLLENS, *Judge.*

Clerk's certificate to the foregoing.

I, A. D. Bernoudy, clerk of the seventh district court for the parish of Orleans, duly commissioned and sworn as such, do hereby certify that the Honorable Thomas Wharton Collens, whose name is signed to the foregoing certificate, is the sole judge of this court, and that he
53 is duly commissioned and qualified as such. And I do further certify that said court is a court of record.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, on this sixth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and in the ninety-fourth year of the independence of the United States.

[SEAL.] A. D. BERNOUDY, *Clerk.*

(Indorsement on record:) No. 276. Justo Garcia y Leon, plaintiff in error, vs. Mariano Galceran. Louisiana, 7th district court.

Filed 3d November, 1869.